

tate of Utah

DEPARTMENT OF NATURAL RESOURCES **Division of Water Rights**

MICHAEL R. STYLER Executive Director

KENT L. JONES State Engineer/Division Director

REISSUED ORDER OF THE STATE ENGINEER NOV 2 1 2017

For Permanent Change Application Number 35-5748 (a41698)

Permanent Change Application Number 35-5748 (a41698) in the name of Summit Water Distribution Company was filed on May 26, 2016, to change the points of diversion, places of use, and uses of 4.73 cubic feet per second (cfs) or 1328.168 acre-feet (af) of water as evidenced by Water Right Numbers 35-5748, 35-5749, 35-5806, 35-5822, 35-8417, 35-9738, 35-9906, 35-9909, and 35-12892. Heretofore, the water has been diverted from the following points:

- Surface South 890 feet and West 130 feet from the NE Corner of Section 8, T2S, R4E, SLB&M (Spring Creek (35-5748, 35-5749));
- Surface North 7 feet and East 7 feet from the SW Corner of Section 4, T2S, R4E, SLB&M (East Canyon Creek (35-5749));
- Surface North 525 feet and East 760 feet from the SW Corner of Section 4, T2S, R4E, SLB&M (East Canyon Creek (35-5749));
- Surface South 980 feet and West 130 feet from the NE Corner of Section 8, T2S, R4E, SLB&M (East Canyon Creek (35-5749));
- Surface South 185 feet and East 1568 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Cannon No. 2 Ditch Spring Creek (35-12892));
- Surface South 2210 feet and East 1520 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Willow Creek (35-5806, 35-9738, 35-9906));
- Surface South 1320 feet and East 2310 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Willow Creek (35-9738, 35-9906));
- Surface East 430 feet from the N1/4 Corner of Section 31, T1S, R4E, SLB&M (Willow Creek (35-5806, 35-9738, 35-9906));
- Surface South 1000 feet and East 350 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Spring Creek (35-5806, 35-9738));
- (10) Surface South 1750 feet and West 230 feet from the N¹/₄ Corner of Section 1, T2S, R3E, SLB&M (Red Pine Creek (35-5806, 35-9738));
- (11) Surface South 1090 feet and West 500 feet from the NE Corner of Section 36, T1S, R3E, SLB&M (Spring Creek (35-5822, 35-9906));
- (12) Surface North 65 feet and West 100 feet from the S1/4 Corner of Section 19, T1S, R4E, SLB&M (Spring Creek (35-5822, 35-9906));
- (13) Surface North 1720 feet and West 120 feet from the S1/4 Corner of Section 30, T1S, R4E, SLB&M (Spring Creek (35-5822, 35-9906));
- (14) Surface South 1090 feet and East 350 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Spring Creek (35-5822, 35-9906));
- (15) Surface South 200 feet and East 1550 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Spring Creek (35-5822, 35-9906));
- (16) Surface North 2640 feet and West 430 feet from the SE Corner of Section 30, T1S, R4E, SLB&M (Willow Creek (35-8417));



- (17) Surface North 924 feet and West 1190 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (East Canyon Creek & White Pine Creek (35-8417));
- (18) Surface South 1650 feet and West 500 feet from the NE Corner of Section 31, T1S, R4E, SLB&M (Red Pine Creek (35-8417));
- (19) Surface South 200 feet and East 1595 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Spring Creek Cannon Ditch No 2 (35-9030));
- (20) Surface North 300 feet and East 100 feet from the W¼ Corner of Section 31, T1S, R4E, SLB&M (Willow Creek & E. Snyder Spring (35-9909));
- (21) Surface North 1854 feet and West 749 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (East Canyon Creek (35-9909));
- (22) Surface North 1800 feet and West 2145 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (Red Pine Creek (35-9909));
- (23) Surface North 2353 feet and West 1414 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (Red Pine Creek (35-9909));
- (24) Surface North 2400 feet and East 1200 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (East Canyon Creek (35-9909));
- (25) Surface North 600 feet and West 900 feet from the E¹/₄ Corner of Section 31, T1S, R4E, SLB&M (Red Pine Creek (35-9909));
- (26) Surface North 2700 feet and West 950 feet from the SE Corner of Section 32, T1S, R4E, SLB&M (East Canyon Creek (35-9909));
- (27) Surface North 2300 feet and West 2500 feet from the SE Corner of Section 32, T1S, R4E, SLB&M (East Canyon Creek (35-9909));
- (28) Surface North 83 feet and East 2258 feet from the SW Corner of Section 19, T1S, R4E, SLB&M (Stoven & Young Ditch Spring Creek (35-12892));
- (29) Surface South 1155 feet and East 370 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Ephraim Snyder Spring Creek (35-12892));
- (30) Surface North 949 feet and West 1196 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (East Canyon Creek (35-12892));
- (31) Surface South 1075 feet and West 475 feet from the NW Corner of Section 31, T1S, R4E, SLB&M (Cannon No. 1 Ditch Spring Creek (35-12892));
- (32) Directly on a spring (Bailey Spring) at a point located within the NW¼SW¼ of Section 33, T1S, R4E, SLB&M.

The water has been used for the irrigation of 441.34 acres from April 1 to October 31; year-round, indoor, domestic requirements of 2.0 equivalent domestic units (EDUs); and year-round stockwatering of 116.0 equivalent livestock units (ELUs) in cattle, horses, or equivalent species. The water has been used in all or portion(s) of Sections 19, 29, 30, 31, 32, & 33, T1S, R4E, SLB&M; and Sections 4 & 9, T2S, R4E, SLB&M.

Hereafter, it is proposed to divert 1202.055 acre-feet of water from points of diversion changed to:

- (1) Well South 128 feet and East 432 feet from the N¼ Corner of Section 13, T1S, R3E, SLB&M;
- (2) Surface North 677 feet and East 1577 feet from the W¼ Corner of Section 12, T1S, R3E, SLB&M (East Canyon Creek-Water Treatment Plant);

- (3) Well North 671 feet and West 987 feet from the SE Corner of Section 3, T1S, R3E, SLB&M;
- (4) Well South 540 feet and East 826 feet from the NW Corner of Section 12, T1S, R3E, SLB&M;
- (5) Well South 936 feet and East 1309 feet from the W¼ Corner of Section 19, T1S, R4E, SLB&M;
- (6) Well South 951 feet and East 577 feet from the NW Corner of Section 19, T1S, R4E, SLB&M (existing 8-inch well, 183 feet deep);
- (7) Well North 765 feet and East 503 feet from the W¹/₄ Corner of Section 20, T1S, R4E, SLB&M;
- (8) Surface North 949 feet and West 1196 feet from the SE Corner of Section 31, T1S, R4E, SLB&M (West Grade Canal / McLeod Creek);
- (9) Well South 733 feet and East 81 feet from the N¹/₄ Corner of Section 13, T1S, R3E, SLB&M (existing 10-inch well, 850 feet deep);
- (10) Well North 758 feet and East 505 feet from the W¼ Corner of Section 20, T1S, R4E, SLB&M;
- (11) Well South 1335 feet and West 23 feet from the NE Corner of Section 1, T2S, R3E, SLB&M (existing 10-inch well, 695 feet deep);
- (12) Well South 701 feet and East 1068 feet from the N¼ Corner of Section 13, T1S, R3E, SLB&M;
- (13) Spring South 1112 feet and West 457 feet from the NE Corner of Section 36, T1S, R3E, SLB&M (Spring Creek Springs).

The water is to be used for year-round municipal purposes within the service area of Summit Water Distribution Company.

Notice of the application was published in <u>The Park Record</u> on July 13 and 20, 2016, and a protest was received from US Bureau of Reclamation. A hearing was not held.

The protestant was concerned that the proposed sources are potentially more reliable than the historical sources, and the quantity of water historically enjoyed by the exercise of the underlying rights may not equate to the full duty required for the claimed uses. The protestant did not provide data regarding the flow of any specific heretofore sources in question nor details regarding what historical uses may not have enjoyed a full supply. The protestant requested that the State Engineer impose appropriate conditions limiting withdrawal and use of water to the historical amount enjoyed by the underlying rights so that the rights would not be enlarged through this process.

An Order of the State Engineer approving this application with conditions was originally issued on May 3, 2017. A Request for Reconsideration was received on May 23, 2017. The State Engineer has reviewed this request and concurs with a portion of the request. The applicant's request noted that the original order incorrectly imposed a 20% reduction on a portion of water right 35-9909. The applicant correctly indicated that this reduction should be 12%. An Amended Order of the State Engineer was approved on July 11, 2017 with the noted corrections made. However, upon further review the State Engineer has determined that the diversion and



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depletion limitations of several of the subject water rights were evaluated in prior change applications. It is the State Engineer's opinion that these water rights should not bear the 10% diversion and depletion cut discussed herein and should instead remain as previously evaluated. The table on page 6 of this order has been updated, together with associated diversion and depletion limitations in the conditions of approval.

The following table shows the underlying rights and priorities, Weber decree award basis, associated sources, and historical uses.

WR	R Priority Decree Historical Sources		Historical Sources	Historical Uses
Number		Awards		
35-5748	1875	449	Spring Creek (Bates, Snyder & Dorrity Ditch)	16.925 acres
35-5749	1875	452	East Canyon Creek	51.293 acres
			(Bates, Snyder & Dorrity Ditch, Mrs. Snyders 1 & 2)	
35-5806	35-5806 1860 412 Spring C		Spring Creek Springs, Willow and Red Pine Creeks	16.667 acres
			(Johnson, Redden, & Snyder, Snyder 3, Snyder 1, and	:
			Snyder-Gill ditches)	
35-5822	1860	411	Spring, Willow, & Red Pine Creeks	8.158 acres, 87
			(Cannon(s), Stoven & Young, and E Snyder Ditches)	ELU & 2 EDU
35-8417	1861	417	Willow, White & Red Pine & East Canyon Creeks	54.0 acres
			(West Grade Canal and unnamed ditch)	
35-9738	1860	412	Spring Creek Springs, Willow and Red Pine Creeks	32.4733 acres &
			(Johnson, Redden, & Snyder, Snyder 3, Snyder 1, and	29 ELU
			Snyder-Gill ditches)	
35-9906	1860	412	Spring Creek Springs, Willow and Red Pine Creeks	17.8667 acres
			(Johnson, Redden, & Snyder, Snyder 3, Snyder 1, and	•
		•	Snyder-Gill ditches)	
35-9909	1861 (65.1%),	420,	East Canyon, Red Pine, Willow, Bailey Springs and	12.05 acres
	1870 (34.9%)	434,	other springs, (Archibald & Cardon Ditches, Cannon	
		435,	Nos. 8 & 9 Ditches, other Cannon Ditches,	
		436	T.L.Powers Ditch, Baily Ditches)	
35-12892	1860 (93.5%),	411,	Spring, Willow, & Red Pine Creeks, Spring Creek	231.9 acres
	1861 (6.5%)	412,	Springs and unnamed springs (West Grade Canal,	
		416	Cannon(s), Stoven & Young, and E Snyder Ditches)	
		'		Totals:
]		441.333 acres,
				116 ELUs,
				2 EDUs

To address the protestant's concern, it is noted that the State Engineer has, in the past, authorized change applications proposing to convert surface rights historically for irrigation, to underground sources on the condition that the withdrawal and use of water be limited to the amounts historically available. Such amounts historically available would typically be determined by records of measurement.

In 1988, the State Engineer issued an order to all surface water users in the Snyderville Basin to install headgates and measuring devices to allow the river commissioner to measure and regulate the diversions in the area. The State Engineer is not aware of records of measurement of water diverted at the historical diversion points. It is doubtful that the applicant can document by actual measurements the amounts of water diverted under this right for irrigation uses. However,

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it is the opinion of the State Engineer that data obtained at gaging stations on streams in the area indicates that surface rights in the Snyderville Basin would not receive a full supply of water every year. Given these circumstances, the State Engineer is of the opinion that, for the underlying water rights of priority date 1860 or 1861, there may be times on the historical sources (East Canyon Creek and named and unnamed tributaries) when there is not adequate water to satisfy the full right. It is the opinion of the State Engineer the volume of water approved to be diverted and used should be limited in a similar manner as other change applications on water rights stemming from Weber Decree Awards on these historical sources seeking to use underground sources have been limited. Some comparable water rights on these historical sources on which change applications have been filed are portions of awards 408, 415, 417 and 419 of the Weber Decree. The State Engineer has limited several of the change applications on these awards to 90% of the standard diversion duty for this area to assure that the rights of others are not impaired. Thus the diversion limit for the underlying water rights of 1860 and 1861 priority is reduced by 10% and evaluated at 2.7 acre-feet per acre (90% of the duty of 3 af/acre), with an associated 10% reduction in the depletion quantity as well. The State Engineer, on further review of this application, agrees with the applicant that the overarching purpose for filing this application was the correction of water right records to conform to changes that have been implemented subject to prior approved change applications rather than a proposal for new diversion and use. A decision inconsistent with the prior approvals would tend to dissuade the filing of such applications which the State Engineer believes are critical to maintaining an accurate record of water rights. Accordingly, where the State Engineer has previously quantified a given water right in a prior change application, he has concluded that a decision consistent with that quantification should be made on this application. These grandfathered evaluations are noted as such in the table on the following page.

In order to determine the average amount of water enjoyed by the exercise of the other, junior underlying water rights, the river commissioner reports for the years ranging from 1951 to 1994 on the Weber River system were analyzed. In the analysis, the following key priority dates are mentioned repeatedly, giving an average number of days they were cut during the irrigation season (from March 1 to November 1): 1903, 1889, 1885, 1880, 1875, 1870, 1865, and 1860. This analysis reveals that, on average, water rights of 1870 priority are cut off 26 days each season, and rights of 1875 priority are cut off 43 days. Given an irrigation season of 214 days, this correlates to receiving priority cuts about 12% of the time for rights of 1870 priority and 20% of the time for rights of 1875. The underlying rights carrying those respective priorities must be reduced by an amount equal to the average percentage of time cuts have been experienced in distribution, with an equivalent reduction in the depletion quantity as well.

² It should be understood the irrigation season varies each year, with the definition in the Weber River Decree given as "that period each year between March 1st and November 1st during which water can be beneficially applied in the growing of agricultural crops on the particular land to which it is allocated, in accordance with duty and priority, as specified herein..." The State Engineer is of the opinion the particular lands to which these water rights have been historically allocated may generally enjoy an irrigation season shorter than April 1 to October 31, but this period has been widely adopted for the administration of water rights and suffices for purposes of administering change applications in the Snyderville Basin. The length of time from April 1 to October 31 inclusive is 214 days.



¹ For examples, see approvals on 35-10920 (a24808), 35-5699 (a16047), 35-10980 (a16047a), 35-11394 (a27583), 35-12014 (a32058), 35-12892 (a24672), and 35-8413 (a24674).

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In summary, the following table shows the total allowable diversion and depletion afforded these rights after the reductions discussed above are factored in. Depletion for irrigation is calculated based on the consumptive use of alfalfa, the full-season value for the Snyderville Basin area being 18.5 inches³ (1.5417 feet) which is 51.39% of the 3 af/ac full-season diversion duty. Depletion of stock water is estimated at 0.028 af/ELU, and depletion of domestic use is estimated at 0.09 af/EDU.

WR Number	Priority	Decree Awards	Historical Uses	Reduction	Allowable Diversion after reduction (af)	Allowable Depletion (af)
35-5748	1875	449	16.925 acres	20%	40.62	20.87
35-5749	1875	452	51.293 acres	20%	123.10	63.26
35-5806	1860	412	16.667 acres	0%4	50.00	25.69
35-5822	1860	411	8.158 acres, 87 ELU & 2 EDU	0%5	27.81	15.19
35-8417	1861	417	54.0 acres	10%	145.80	74.93
35-9738	1860	412	32.4733 acres & 29 ELU	0%6	98.23	50.88
35-9906	1860	412•	17.8667 acres	0%7	53.60	27.54
35-9909	1861 (65.1%), 1870 (34.9%)	420, 434, 435, 436	12.05 acres	0% ⁸ (65.1%), 12% (34.9%)	34.64	17.80
35-12892	1860 (93.5%), 1861 (6.5%)	411, 412, 416	231.9 acres	10%	626.13	321.76
-					Total: 1199.93	Total: 617.93

Based on the above analysis and reductions, the amount of water which will be considered for change is 1199.93 acre-feet with an associated depletion limit of 617.93 acre-feet.

In evaluating the distribution records and the various elements of the underlying right, it is not the intention of the State Engineer to adjudicate the extent of the right, but rather to provide sufficient definition of the right to assure that other vested rights are not impaired by the change and/or no enlargement occurs. Should a future analysis bear out differing facts, the State Engineer may adjust the figures accordingly.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights, if certain conditions are imposed. The applicant is put on notice that diligence must be shown in pursuing the development of this application which can be demonstrated by the completion of the project as proposed in the change application.

It is, therefore, **ORDERED** and Permanent Change Application Number 35-5748 (a41698) is hereby **APPROVED** subject to prior rights and the following condition(s):



³ Consumptive Use of Irrigated Crops in Utah, Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October, 1994, Table 25, Park City Radio Station, p292. The benchmark crop for the referenced calculation is alfalfa, the most typical and consumptive crop evaluated in the study (18.5 inches or 1.5417 feet. 1.5417 feet / 3.0 feet duty = 51.39%).

⁴ See prior change a16960.

⁵ See prior change al 1902

⁶ See prior change a16376

⁷ See prior change a8476

⁸ See prior change a12197a

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- 1) This change application is reduced and approval hereby limited to the amount of water necessary to deplete 617.93 acre-feet of water annually up to a total diversion of 1199.93 acre-feet for year-round municipal purposes within the service area of Summit Water Distribution Company. In no case can the depletion of water exceed 617.93 acre-feet. The applicant shall maintain records to demonstrate the stated depletion and diversion limitations are not exceeded.
- The applicant shall make an accounting for the diversions and use of water under these water rights, as it is used from any and all approved sources herein for the purposes specified, in its annual Water Use Plan under the Distribution Management Plan of the Snyderville Basin area. Regulation of diversions from the surface points of diversion will remain in the charge of the River Commissioner to ensure other rights in the system are not impaired. This will include coordinating with the Commissioner on the rate and times at which water is diverted from the surface source(s).
- 3) The amount of water diverted and used for municipal purposes by Summit Water Distribution Company from all sources pertaining to this application shall be metered and the data shall be reported annually to the Division of Water Rights Water Use Program.
- Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from each source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.
- 5) Information sufficient to demonstrate that the water right has been fully placed to use, and does not duplicate quantities claimed in prior perfected rights, must accompany proof. When the water use records sufficiently demonstrate that the water appropriated under this water right has been fully placed to use, a registered engineer or land surveyor should file proof, certifying as to the location, uses and extent of the water right.
- 6) Whereas this Change Application has been filed to entirely replace and supersede prior approved Change Applications Numbers 35-5748 (a18450), 35-5749 (a18449), 35-5806 (a16960), 35-5822 (a11902), 35-8417 (a24652), 35-9738 (a16376), 35-9906 (a8476), 35-9909

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- (a12197a), and 35-12892 (a24672), with this approval those prior applications are considered to have been WITHDRAWN by the applicant.
- 7) As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits (UCA 73-1-4).

This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant. The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion.

The water must be put to beneficial use and proof must be filed on or before <u>July 31, 2027</u>, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address. Additionally, if ownership of this water right or the property with which it is associated changes, the records of the Division of Water Rights should be updated. For assistance in updating title to the water right please contact the Division at the phone number below.



Your contact with this office, should you need it, is with the Weber River/Western Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

22 nd day of // number, 2017.

Mailed a copy of the foregoing Order this 2214

Summit Water Distribution Company 8506 Bluebird Lane Park City, UT 84098

US Bureau of Reclamation c/o Wayne G. Pullan, Area Manager 302 East 1860 South Provo, UT 84606-7317

Cole Panter, River Commissioner PO Box 741 Ogden, UT 84402

Division of Water Rights Distribution Section c/o Ben Anderson WEBER RIVER

Utah Division of Drinking Water PO Box 144830 Salt Lake City, UT 84114-4830

Division of Water Rights Water Use Program

Dóralee Cannon, Applications/Records Secretary